

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JEFFREY RITCHISON,

Defendant.

8:13CR269

ORDER

This matter is before the Court on the Defendant's Motion to Vacate Judgment in 2255 Proceeding, ECF No. 77. This Court notes that the Defendant filed an earlier motion and amended motion under 28 U.S.C. § 2255, ECF Nos. 42, 45, which were addressed by the Court and resulted in an Amended Judgment and reduced term of incarceration. A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain–

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C. § 2255 (h).

The Defendant asserts that he is entitled to relief based on a new rule of constitutional law that was unavailable to him prior to June 4, 2018, specifically the holdings in *Hughes v. United States*, 138 Sup. Ct. 1765 (2018). Without the required

certification from the Eighth Circuit, however, this Court cannot consider the merits of the Defendant's second § 2255 motion.¹ Accordingly, the pending motion will be denied.

IT IS ORDERED:

1. The Defendant's Motion to Vacate Judgment in 2255 Proceeding, ECF No. 77, is denied; and
2. The Clerk of the Court is directed to mail a copy of this Memorandum and Order to the Defendant at his last known address.

Dated this 6th day of December, 2019.

BY THE COURT:

s/Laurie Smith Camp
Senior United States District Judge

¹ Further, assuming without deciding that the *Hughes* decision would provide the Defendant any relief under § 2255, his Motion was not timely filed under § 2255(f).